

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|------------------------|---|-------------------------|
| WILLIAM PARKER, |) | |
| |) | |
| Plaintiff, |) | Hon. J. Nicholas Ranjan |
| |) | |
| v. |) | 2:23-cv-2102-NR |
| |) | |
| EDWARD GAINEY, et al., |) | JURY TRIAL DEMANDED |
| |) | |
| Defendants. |) | |

**DEFENDANT MICHAEL GAY’S PARTIAL MOTION TO DISMISS PLAINTIFF’S
COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendant Detective Michael Gay (“Detective Gay”) respectfully submits this Motion to Dismiss the Fourth Amendment malicious prosecution claim, Fourteenth Amendment claim, and duplicative First Amendment and Fourth Amendment claims filed against him by Plaintiff William Parker (“Mr. Parker”).

1. Mr. Parker filed the instant action against Detective Gay and other defendants alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. ECF No. 1.

2. The complaint sets forth the following claims against Detective Gay: (1) Fourth Amendment excessive force; (2) Fourth Amendment false arrest; (3) Fourth Amendment malicious prosecution; (4) First Amendment retaliation; (5) a second claim of First Amendment retaliation; (6) a second claim of Fourth Amendment excessive force, false arrest, and malicious prosecution, (7) a Fourteenth Amendment claim for failure to train, discipline, or supervise. *Id.*

3. Mr. Parker’s Complaint alleges that Detective Gay “filed and/or participated in the filing of criminal charges against the plaintiff which were not supported by probable cause and were based upon false accusations made by these defendants that plaintiff had engaged in criminal activity, including false allegations that the plaintiff assaulted defendants Officer Michael Gay and Bethany Hallam and/or engaged in disorderly conduct.” *Id.* ¶ 39.

4. Mr. Parker fails to include any facts to support his conclusion that Detective Gay “filed and/or participated in the filing of charges against the plaintiff,” which is required to state a claim for malicious prosecution.

5. Even if there are sufficient facts to state a claim for malicious prosecution, Detective Ford is entitled to qualified immunity.

6. Mr. Parker also fails to state a Fourteenth Amendment claim against Detective Gay for failure to train, discipline, and/or supervise. *Id.* ¶¶ 45-51.

7. To the extent Mr. Parker is stating claims related to his arrest and prosecution under the Fourteenth Amendment, Mr. Parker cannot bring such claims because they are properly brought under the Fourth Amendment. *See Albright v. Oliver*, 510 U.S. 266, 273 (1994).

8. To the extent Mr. Parker is stating a *Monell* claim against Detective Gay, this claim fails as a matter of law because *Monell* claims cannot be brought against individual defendants. *Lepre v. Lukus*, 602 F. App’x 864, 869 n.4 (3d Cir. 2015).

9. Mr. Parker also states a second set of First and Fourth Amendment claims against Detective Gay that stem from the same incident as his first set of claims. *Id.* ¶¶ 45-51. These claims should be dismissed because they are redundant.

10. Detective Gay respectfully requests that this Court dismiss the following claims against him in Mr. Parker’s Complaint, as explained in further detail in his Brief accompanying this motion: (1) Fourth Amendment malicious prosecution claim; (2) Fourteenth Amendment failure to train, discipline, and/or supervise; and (3) redundant Fourth Amendment and First amendment claims.

11. A proposed order is attached.

Respectfully submitted,

KRYSIA KUBIAK
City Solicitor

/s/ Hillary M. Weaver

Hillary M. Weaver, Esquire
Assistant City Solicitor
PA I.D. No. 322545
City of Pittsburgh Department of Law
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219
(412) 255-2014
hillary.weaver@pittsburghpa.gov
Counsel for Detective Michael Gay

CERTIFICATE OF SERVICE

I, Hillary M. Weaver, hereby certify that I caused a copy of Michael Gay's Partial Motion to Dismiss and Brief in Support thereof to be served upon the following via electronic mail:

Mr. William Parker
Parkerlegal412@gmail.com
Pro Se Plaintiff

Date: May 10, 2024

/s/ Hillary M. Weaver
Hillary M. Weaver, Esquire
Assistant City Solicitor
Counsel for Detective Michael Gay